

# State of South Dakota

EIGHTIETH SESSION  
LEGISLATIVE ASSEMBLY, 2005

832L0764

## HOUSE BILL NO. 1256

Introduced by: Representatives Olson (Ryan) and Rounds and Senators Olson (Ed) and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to regulate residential contractors.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms in this Act mean:

4 (1) "Contractor," a contractor performing a realty improvement for any person  
5 constructing, expanding, or remodeling a single family dwelling;

6 (2) "Department," the Department of Revenue and Regulation;

7 (3) "Secretary," the secretary of the Department of Revenue and Regulation.

8 Section 2. Every contractor shall register with the department. No contractor may:

9 (1) Advertise, offer to do work, submit a bid, or perform any work as a contractor  
10 without being registered as required by this Act;

11 (2) Advertise, offer to do work, submit a bid, or perform any work as a contractor while  
12 the contractor's registration is suspended or revoked;

13 (3) Use a false or expired registration number in purchasing or offering to purchase an  
14 advertisement for which a contractor registration number is required; or

15 (4) Transfer a valid registration to an unregistered contractor or allow an unregistered



1 contractor to work under a registration issued to another contractor.

2 A violation of this section is a Class 2 misdemeanor.

3 Section 3. An applicant for registration as a contractor shall submit an application under oath  
4 upon a form to be prescribed by the secretary.

5 Section 4. Each applicant shall file with the department a surety bond issued by a surety  
6 insurer authorized to do business in South Dakota in the sum of ten thousand dollars. The bond  
7 shall have the State of South Dakota named as obligee with good and sufficient surety in a form  
8 to be approved by the department. The bond shall be continuous and may be canceled by the  
9 surety upon the surety giving written notice to the secretary. A cancellation or revocation of the  
10 bond or withdrawal of the surety from the bond automatically suspends the registration issued  
11 to the registrant until a new bond or reinstatement notice has been filed and approved as  
12 provided in this section. The bond shall be conditioned that the applicant will pay all persons  
13 performing labor, including employee benefits, for the contractor, will pay all taxes and  
14 contributions due to the state, and will pay all persons furnishing labor or material or renting or  
15 supplying equipment to the contractor and will pay all amounts that may be adjudged against  
16 the contractor by reason of breach of contract including negligent or improper work in the  
17 conduct of the contracting business. A change in the name of a business or a change in the type  
18 of business entity does not impair a bond for the purposes of this section so long as one of the  
19 original applicants for such bond maintains partial ownership in the business covered by the  
20 bond.

21 Section 5. At the time of initial registration or renewal, the contractor shall provide a bond  
22 or other security deposit as required by this Act and comply with all of the other provisions of  
23 this Act before the department shall issue or renew the contractor's certificate of registration.

24 Section 6. Any person, firm, or corporation having a claim against the contractor for any of

1 the items referred to in this Act may bring suit upon the bond or deposit in the circuit court of  
2 the county in which the work was done or of any county in which jurisdiction of the contractor  
3 may be had. The surety issuing the bond shall be named as a party to any suit upon the bond.  
4 Action upon the bond or deposit brought by a residential homeowner for breach of contract by  
5 a party to the construction contract shall be commenced by filing the summons and complaint  
6 with the clerk of the circuit court within two years from the date the claimed contract work was  
7 substantially completed or abandoned. Action upon the bond or deposit brought by any other  
8 authorized party shall be commenced by filing the summons and complaint with the clerk of the  
9 circuit court within one year from the date the claimed labor was performed and benefits  
10 accrued, taxes and contributions owing the State of South Dakota became due, materials and  
11 equipment were furnished, or the claimed contract work was substantially completed or  
12 abandoned. Service of process in an action against the contractor, the contractor's bond, or the  
13 deposit shall be exclusively by service upon the department. Three copies of the summons and  
14 complaint and a fee, adopted by rule by the department pursuant to chapter 1-26, of not less than  
15 twenty dollars to cover the costs shall be served by registered or certified mail, or other delivery  
16 service requiring notice of receipt, upon the department at the time suit is started. The  
17 department shall maintain a record, available for public inspection, of all suits so commenced.  
18 Service is not complete until the department receives the fee and three copies of the summons  
19 and complaint. The service shall constitute service on the registrant and the surety for suit upon  
20 the bond or deposit. The department shall transmit the summons and complaint or a copy thereof  
21 to the registrant at the address listed in the registrant's application and to the surety within two  
22 days after the summons and complaint was received.

23 Section 7. The surety upon the bond is not liable in an aggregate amount in excess of the  
24 amount named in the bond nor for any monetary penalty assessed pursuant to this Act for an

1    infraction. The liability of the surety is not cumulate if the bond has been renewed, continued,  
2    reinstated, reissued, or otherwise extended. The surety upon the bond may, upon notice to the  
3    department and the parties, tender to the clerk of the court having jurisdiction of the action an  
4    amount equal to the claims thereunder or the amount of the bond less the amount of judgments,  
5    if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond  
6    shall be exonerated. However, if the actions commenced and pending at any one time exceed  
7    the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following  
8    order:

- 9       (1)   Employee labor and claims of laborers, including employee benefits;
- 10      (2)   Claims for breach of contract by a party to the construction contract;
- 11      (3)   Registered or licensed subcontractors, material, and equipment;
- 12      (4)   Taxes and contributions due the State of South Dakota;
- 13      (5)   Any court costs, interest, and attorney's fees plaintiff may be entitled to recover. The  
14            surety is not liable for any amount in excess of the penal limit of its bond.

15       A payment made by the surety in good faith exonerates the bond to the extent of any  
16    payment made by the surety.

17       Section 8. The prevailing party in an action filed under this Act against the contractor and  
18    contractor's bond or deposit, for breach of contract by a party to a construction contract, is  
19    entitled to costs, interest, and reasonable attorneys' fees. The surety upon the bond is not liable  
20    in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty  
21    assessed pursuant to this Act for an infraction.

22       Section 9. If a final judgment impairs the liability of the surety upon the bond so furnished  
23    that there is not in effect a bond in the full amount prescribed in this Act, the registration of the  
24    contractor is automatically suspended until the bond liability in the required amount unimpaired

1 by unsatisfied judgment claims is furnished.

2 Section 10. In lieu of the surety bond required by this Act the contractor may file with the  
3 department a deposit consisting of cash or other security acceptable to the department.

4 Section 11. Any person having filed and served a summons and complaint as required by  
5 this Act having an unsatisfied final judgment against the registrant for any items referred to in  
6 this Act may execute upon the security held by the department by serving a certified copy of the  
7 unsatisfied final judgment by registered or certified mail upon the department within one year  
8 of the date of entry of such judgment. Upon the receipt of service of such certified copy the  
9 department shall pay or order paid from the deposit towards the amount of the unsatisfied  
10 judgment. The priority of payment by the department shall be the order of receipt by the  
11 department, but the department has no liability for payment in excess of the amount of the  
12 deposit.

13 Section 12. At the time of registration and subsequent reregistration, the applicant shall  
14 furnish proof of general liability insurance in the amount of three hundred thousand dollars.

15 Section 13. An expiration, cancellation, or revocation of the insurance policy or withdrawal  
16 of the insurer from the insurance policy automatically suspends the registration issued to the  
17 registrant until a new insurance policy or reinstatement notice has been filed and approved as  
18 provided in this Act.

19 Section 14. A certificate of registration is valid for two years and shall be renewed on or  
20 before the expiration date. The department shall issue to the applicant a certificate of registration  
21 upon compliance with the registration requirements of this Act.

22 Section 15. If the department approves an application, it shall issue a certificate of  
23 registration to the applicant.

24 Section 16. If a contractor's surety bond or other security has an unsatisfied judgment against

1 it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration  
2 shall be automatically suspended on the effective date of the impairment or cancellation. The  
3 department shall mail notice of the suspension to the contractor's address on the certificate of  
4 registration by certified and by first class mail within two days after suspension.

5 Section 17. Renewal of registration is valid on the date the department receives the required  
6 fee and proof of bond and liability insurance, if sent by certified mail or other means requiring  
7 proof of delivery. The receipt or proof of delivery shall serve as the contractor's proof of  
8 renewed registration until the contractor receives verification from the department.

9 Section 18. The department shall charge fees for issuance, renewal, and reinstatement of  
10 certificates of registration; and changes of name, address, or business structure. The department  
11 shall set the fees by rules promulgated pursuant to chapter 1-26.

12 The entire amount of the fees are to be used solely to cover the full cost of issuing  
13 certificates, filing papers and notices, and administering and enforcing this Act. The costs shall  
14 include reproduction, travel, per diem, and administrative and legal support costs.

15 Section 19. No person engaged in the business or acting in the capacity of a contractor may  
16 bring or maintain any action in any court of this state for the collection of compensation for the  
17 performance of any work or for breach of any contract for which registration is required under  
18 this Act without alleging and proving that such contractor was a duly registered contractor and  
19 held a current and valid certificate of registration at the time such contractor contracted for the  
20 performance of such work or entered into such contract.

21 Section 20. The registration provisions of this Act do not apply to:

- 22 (1) Any person working on his or her own property, whether occupied by him or her or  
23 not, and any person working on his or her personal residence, whether owned by him  
24 or her or not; or

- 1       (2)   A licensed architect or civil or professional engineer, a licensed electrician, or a
- 2           licensed plumber. The exemption provided in this subdivision is applicable only
- 3           when the licensee is operating within the scope of his or her license.